

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ROBERT ALLEN BECKER, JIMMY
ALLAN BECKER, STEVEN EDWARD DAY and
MICHAEL THOMAS DAY, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHIRLEY ELIZABETH DAY, formerly known as
SHIRLEY ELIZABETH BECKER,

Respondent-Appellant,

and

CARL EDWARD DAY,

Respondent,

and

SAMUEL BERRY,

Respondent.

UNPUBLISHED

July 25, 2000

No. 221340

Wayne Circuit Court

Family Division

LC No. 96-337014

Before: Bandstra, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Respondent-appellant (hereinafter “respondent”), biological mother of the involved minor children, appeals as of right from a family court order terminating her parental rights to the children. Our review of the record reveals that the family court did not clearly err in determining that clear and convincing evidence supported termination of respondent’s parental rights pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We affirm.

Contrary to respondent's contention, the record contained clear and convincing evidence of both respondent's failure and inability to provide proper care and custody. *In re Hulbert*, 186 Mich App 600, 605; 465 NW2d 36 (1990). Respondent on more than one occasion failed to protect Steven and the other children from Carl Day's¹ physical abuse. Respondent also failed to adequately understand or address the children's serious developmental delays and intellectual deficits. Additionally, during the children's unsupervised visitation with her, respondent failed to prevent Robert from slamming a vehicle trunk onto Jimmy's hands, despite her knowledge of the children's aggressive and antagonistic behaviors. See *In re Harmon*, 140 Mich App 479, 483; 364 NW2d 354 (1985) (Parental neglect involves a failure to provide for the children's emotional and physical well being.).

With respect to respondent's inability to provide the children care and custody within a reasonable time, the record contained overwhelming evidence of the children's significant needs for counseling, special educational programs and other assistance to address their varying degrees of behavioral difficulties and emotional and learning impairments. The record also resoundingly established respondent's continuing opposition, during the entirety of the children's approximately three-year placement period, to addressing and planning for the children's special needs, and the consequently bleak prospect for respondent's successful future involvement in therapy. In light of the children's young ages and well-documented special needs, respondent's persistent failure to recognize these needs, and respondent's unflinching rejection of any efforts to comprehend and address the children's needs, we find no clear error in the family court's determination that "there is no reasonable expectation that [respondent] will be able to provide proper care and custody within a reasonable time considering the child[ren]'s age." MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g); see also *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991) ("The trial court's decision to terminate appropriately focused not only on how long it would take respondent to improve her parenting skills, but also on how long her three children could wait for this improvement.").²

With respect to the children's best interests, the record indicated that respondent displayed genuine love and affection for the children and that she complied with several aspects of petitioner's proposed treatment plan. Respondent also points out that the children's attorney argued at the termination hearing that Jimmy had expressed sadness with his placement outside respondent's home, and that the termination hearing testimony revealed no potential adoptive homes. We conclude, however, that in light of the children's special needs and behavioral problems and respondent's demonstrated unwillingness over a three-year period to accept the children's shortcomings or otherwise

¹ Respondent Carl Day is the biological father of minors Steven and Michael. Day, who physically abused the children, did not participate in petitioner's treatment plan and last visited the children in April 1997. Day is not a party to the instant appeal.

Respondent Samuel Berry, Jimmy's putative father, refused to acknowledge paternity of Jimmy and failed to visit or support him. Berry is not a party to the instant appeal.

² Because the family court properly terminated respondent's parental rights under subsection 19b(3)(g), we need not address the propriety of termination pursuant to the other grounds cited by the family court. MCL 712A.19b(3); MSA 27.3178(598.19b)(3).

meaningfully participate in therapy, the family court did not clearly err in finding that termination of respondent's parental rights served the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5).

Affirmed.

/s/ Richard A. Bandstra

/s/ Hilda R. Gage

/s/ Kurtis T. Wilder